

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WAMEL ALLAH,

Plaintiff,

Hon. Hugh B. Scott

04CV868A

Order

v.

J. SLAWATYCKI,
C. YANCKEEN,

Defendants.

Pursuant to this Court's Scheduling Order (Docket No. 12), plaintiff filed an Amended Complaint (Docket No. 14) to add defendant Slawatcki as a party again. That Order, however, set the deadline of December 30, 2005, for the parties to move to amend the pleadings (Docket No. 12, para. 1).

In a prior Order granting plaintiff in forma pauperis status (Docket No. 3), the Court dismissed claims against Slawatycki because plaintiff failed to state a claim against her in the original Complaint (id. at 2-3). In the Amended Complaint, plaintiff alleges that Slawatycki, on or about April or May 2003, told plaintiff that Slawatycki had ordered defendant Yankeen to assault plaintiff on October 31, 2002 (Docket No. 14, Am. Compl. ¶ 5; cf. Docket No. 1, Compl. at 5 (First Claim merely alleging that assault by Yankeen occurred in Slawatycki's presence)). He also alleges that Slawatycki investigated his grievance relevant to the assault (Docket No. 14,

Am. Compl. ¶ 5). He concludes that Slawatycki's acts and retaliatory deprivations constituted deliberate indifference to plaintiff's rights (*id.* ¶ 6).

Plaintiff, however, did not move for leave to amend the Complaint, but instead merely filed and served the amended pleading. Given that plaintiff is proceeding pro se, the filed Amended Complaint will be considered to be his motion. The Court Clerk is to amend the docket entry for the Amended Complaint to identify it (Docket No. 14) as a Motion for Leave to Amend, with attached proposed Amended Complaint.

Responses to this motion shall be filed on or before **December 28, 2005**. A reply, if any, shall be filed on or before **January 13, 2006**, and the motion then will be deemed submitted without oral argument unless otherwise determined by the Court upon review of the papers.

So Ordered.

s/HBS

Hon. Hugh B. Scott
United States Magistrate Judge

Buffalo, New York
November 21, 2005